

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEJANDRO ARANA-DUARTE,

Defendant.

Case No. 2:05-cr-00219-RCJ-GWF

ORDER

(Defendant's Request for Documents - #119)

This matter is before the Court on Defendant's Request for Documents (#119), filed on July 9, 2007. Defendant is currently incarcerated and sent his request *pro se*.

On September 18, 2006, Defendant was sentenced to 96 months imprisonment, and Defendant appealed his conviction on October 23, 2006. The Ninth Circuit Court of Appeals affirmed Defendant's sentence and conviction on July 23, 2007. Defendant requests that the Clerk of the Court send him copies of several documents from his criminal case file that includes the full docket sheet and transcripts from the hearings. Defendant explains that he requests these documents in anticipation of filing a motion pursuant to 28 U.S.C. § 2255.

Under certain circumstances, indigent criminal defendants have a constitutional or statutory right to copies of transcripts and/or other documents. *See e.g. Douglas v. California*, 372 U.S. 353 (1963). In the instant case, Defendant was convicted and had his conviction and sentence upheld on appeal. Again, Defendant has indicated that he wishes to file a motion under 28 U.S.C. § 2255 attacking the sentencing in his case.

1 Title 28, U.S.C. § 753(f) provides in relevant part that:

2 Fees for transcripts furnished in proceedings brought under section 2255
3 of this title to persons permitted to sue or appeal *in forma pauperis* shall
4 be paid by the United States out of money appropriated for that purpose if
5 the trial judge or a circuit judge certifies that the suit or appeal is not
6 frivolous and that the transcript is needed to decide the issue presented by
7 the suit or appeal.

8 The Second Circuit has held, however, that “a motion for a free transcript pursuant to § 753(f) is
9 not ripe until a § 2255 motion has been filed.” *U.S. v. Horvath*, 157 F.3d 131, 132 (2d Cir. 1998). A
10 court’s failure to grant an indigent federal prisoner the unconditional right to obtain trial transcripts for
11 purposes of a § 2255 proceeding does not violate the prisoner’s due process or equal protection rights.
12 *U.S. v. MacCollom*, 426 U.S. 317, 323-326 (1976).

13 Defendant has not yet filed his § 2255 motion or requested *in forma pauperis* status. Therefore,
14 he has not met the requirements of § 753(f), and his motion will be denied. Local Special Rule 4-1
15 requires individuals filing § 2255 motions *pro se* to use the court’s form, the instructions to which
16 explain in paragraph 7 that:

17 [I]f you do not have the necessary funds for transcripts . . . you may
18 request permission to proceed *in forma pauperis*. T[o] do this you must
19 execute the attached motion and declaration setting forth information
20 regarding your inability to pay costs and fees. You must also have an
21 authorized officer of the penal institution complete the certificate
22 indicating the amount of money or securities on deposit to your credit in
23 any account in the institutions.

24 Because Defendant’s request is premature, and because he has not filed his § 2255 motion or
25 requested *in forma pauperis* status, the Court will deny his motion, without prejudice, to allow him to
26 re-file the motion should he satisfy the requirements § 753(f). Accordingly,

27 **IT IS HEREBY ORDERED** that Defendant’s Request for Documents (#119) is **denied**
28 without prejudice.

IT IS FURTHER ORDERED that the Clerk of the Court shall send Defendant a form for
Motion Pursuant to 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By a Person in
Federal Custody (Code 28.2255) and the **Information and Instructions for filing a Motion to**
Vacate Sentence Pursuant to 28 U.S.C. § 2255 (Code 28.2255 Instructions).

...

DATED this 1st day of August, 2007.